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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 ARMANDO HERNANDEZ, ) Case No.: 1:20-cv-01019-NONE-SAB (PC)  
12 Plaintiff, )  
13 v. ) ORDER DENYING PLAINTIFF'S MOTION FOR  
14 IFEOMA OGBOEHI, et al., ) APPOINTMENT OF COUNSEL, WITHOUT  
15 Defendants. ) PREJUDICE  
16 ) (ECF No. 29)  
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17 Plaintiff Armando Hernandez is proceeding *pro se* and *in forma pauperis* in this civil rights  
18 action pursuant to 42 U.S.C. § 1983.

19 Currently before the Court is Plaintiff's motion for appointment of counsel, filed September  
20 29, 2021.

21 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.  
22 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent  
23 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern  
24 District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court  
25 may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at  
26 1525.

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1 Without a reasonable method of securing and compensating counsel, the court will seek  
2 volunteer counsel only in the most serious and exceptional cases. In determining whether  
3 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the  
4 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
5 legal issues involved.” Id. (internal quotation marks and citations omitted).

6 In the present case, the Court does not find the required exceptional circumstances. Even if it  
7 assumed that plaintiff is not well versed in the law and that he has made serious allegations which, if  
8 proved, would entitle him to relief, his case is not exceptional. The Court is faced with similar cases  
9 almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and  
10 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel. See  
11 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require development of  
12 further facts during litigation and a pro se litigant will seldom be in a position to investigate easily the  
13 facts necessary to support the case.”) Circumstances common to most prisoners, such as lack of legal  
14 education and limited law library access, do not establish exceptional circumstances that would  
15 warrant a request for voluntary assistance of counsel. The test is whether exception circumstances  
16 exist and here, they do not. There is simply an insufficient showing that Plaintiff is unable to  
17 adequately litigate this action. Further, at this stage of the proceedings, the Court cannot determine  
18 whether Plaintiff is likely to succeed on the merits of his claims. Accordingly, Plaintiff’s motion for  
19 appointment of counsel is be denied, without prejudice.

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21 IT IS SO ORDERED.

22 Dated: September 30, 2021

A handwritten signature in blue ink, appearing to read "James A. Be...", is written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE